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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,839	09/15/2003	Robert D. Montgomery	1056	5292
7590	03/04/2005		EXAMINER	
ROBERT D. MONTGOMERY			ENSEY, BRIAN	
1685 W. 12th St.			ART UNIT	PAPER NUMBER
Reno, NV 89503			2643	

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

	Application No.	Applicant(s)
	10/662,839	MONTGOMERY, ROBERT D.
Examiner	Art Unit	
Brian Ensey	2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-19 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 15 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### *Drawings*

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: See item 49 in figures 1-3, 5 and 6. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

The disclosure is objected to because of the following informalities: Applicant should be consistent in naming item 28. See page 6 line 8 “speaker (28)” and line 9 “hinge mechanism (28)”.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-9, 14 and 17- 19 are rejected under 35 U.S.C. 102(b) as being Duda by U.S.

Patent Application Publication 2002/0186180

Regarding claim 1, Duda discloses headgear and electronics in combination comprising: a hat formed from a brim interconnected to a cap, said brim having a top area, said cap having a top section and a sweatband section, said brim having internal electrical components therein, said cap having internal electrical components therein, and said top area having activation means for activating said internal electrical components (See Figs. 3-9 and paragraphs 0003, 0004, 0011 and 0069).

Regarding claim 3, Duda further discloses said hat further including an earpiece electrically interconnected to a speaker and receiver (See Figs. 3-9 and paragraphs 0028 and 0029).

Regarding claim 4, Duda further discloses said earpiece is further attached via a hinge mechanism, whereby, said earpiece may be conveniently folded into a concealed position within said hat, respectively (See Figs. 3-9 and paragraph 0029).

Regarding claims 5-9, Duda further discloses said activation means includes at least one keyboard, an on/off switch, a display panel, a cell phone or a computer ((See Figs. 3-9 and paragraphs 0003, 0004, 0011 and 0069).

Regarding claim 14, Duda further discloses said electrical components including a solar battery charger and wafer batteries (See Figs. 3-9 and paragraph 0009).

Regarding claim 17, Duda further discloses said internal electrical components are housed within a container that is removably attached onto said hat, whereby said internal electrical components can be easily removed from said hat for washing purposes (See Figs. 3-9 and paragraphs 0024-0029).

Regarding claim 18, Duda discloses headgear and electronics in combination comprising: headgear in the form of a headband having a brim, said headband having internal electrical components, said brim having internal electrical components, and said headgear having activating means for activating said internal electrical components (See Figs. 3-9 and paragraphs 0003, 0004, 0011 and 0069).

Regarding claim 19, Duda further discloses said internal electrical components are removably attached within said headgear (See Figs. 3-9 and paragraphs 0024-0029).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duda in view of Kraft U.S. Patent No. 5,685,017.

Regarding claim 2, Duda discloses a headgear as claimed. Duda does not expressly disclose adjustment means for variably adjusting the size of said cap. However, adjustable hats

are well known in the art and Kraft teaches an adjustable hat with the capability of carrying various electronic devices (See col. 2, lines 24-26 and col.3, lines 7-12). It would have been obvious to one of ordinary skill in the art at the time of the invention to make the hat of Duda adjustable to fit any number of users.

Regarding claim 16, Duda discloses a headgear as claimed. Duda does not expressly disclose said brim includes at least one hinge so as to allow said brim to be flexible. However, adjustable and flexible hats are well known in the art and Kraft teaches an adjustable hat with a flexible brim and with the capability of carrying various electronic devices (See col. 2, lines 24-26 and col.3, lines 7-12). It would have been obvious to one of ordinary skill in the art at the time of the invention to make the hat of Duda. With a flexible brim for easy storage or placement in a pocket or pouch.

Claims 10-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duda.

Regarding claims 10-13, Duda discloses a headgear as claimed. Duda does not expressly disclose internal electrical components when activated by said activation means function as a calculator, a CD player, a mini-disc player, or a palm pilot. However, Duda teaches that his device applies to the hands free integration of popular commercial hand held devices including music and data devices (See paragraphs 0003 and 0004). It would have been obvious to one of ordinary skill in the art at the time of the invention that a calculator, a CD player, a mini-disc player, or a palm pilot are all part of readily available popular commercial hand held devices and would easily integrate into the hat of Duda for elimination of unnecessary distractions to the user (See Dudas paragraph 0056).

Regarding claim 15, Duda discloses a headgear as claimed. Duda does not expressly disclose said hat further includes a storage compartment for containment of a backup battery. However, Duda teaches a solar panel for powering the electronics in the hat and to continually charge a system battery (6) housed in the brim to maintain operation of the system when solar energy is not available. It would have been obvious to one of ordinary skill in the art at the time of the invention that this battery provides the necessary backup system as claimed.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Ensey whose telephone number is 703-305-7363. The examiner can normally be reached on Mon-Fri: 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(703) 872-9306, for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT".  
Hand-delivered responses should be brought to: Customer Service Window, Randolph Building, 401 Dulany Street, Arlington, VA 22314

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BKE  
March 3, 2005

  
CURTIS KUNZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600